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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,703	08/19/2003	Jan Corona	JCO1-H02	5124

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,703

Applicant(s)

CORONA, JAN

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>19 Aug. 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of Applicant's IDS received 18 August 2003.

Election/Restrictions

Applicant's election of Invention I (claims 1-15) in the reply filed on 26 July 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 16-18 have been cancelled by Applicant and new claim 19 is withdrawn from examination because the Applicant has elected the product made and the product made as claimed could be made by the materially different method of taking an oasis block and forming a wet assembly around it and then form a dry assembly around the wet assembly.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 7, and 14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6, 7, and 14 are indefinite because a disclosed limitation in the claims is OASIS, a trademarked product.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 10, 12, and 13 are rejected under 35 U.S.C. §102(b) as being anticipated by Kysela (US 2,453,920).

As to Claim 1, Kysela discloses a plant/dry gift assembly comprising a dry assembly (10, 11, 12, and 20 of Figs. 1-4) comprising a dry vessel defining a top opening (region generally around 12 and 10 as shown in Fig. 4) and having nonperforated walls (in that 12 does not have perforations as shown in Fig. 1); and, a wet assembly (14 and 15 of Figs. 1-3), the wet vessel inserted (col. 2 lines 48-50) into the top opening.

As to Claim 2, Kysela further discloses the dry vessel with a throat (space between 10-11 and 12 in Fig. 4) adjacent to the top opening, the throat and wet vessel cooperatively arranged whereby the wet assembly is insertible into the throat (col. 2 lines 48-50).

As to Claim 3, Kysela further discloses the dry assembly defined by a dry chamber (region defined by 10 of Fig. 1).

As to Claim 4, Kysela further discloses the dry vessel designed to prevent wet vessel form being placed into the dry chamber (by 14 of Figs. 1 and 2).

As to Claim 5, Kysela further discloses the dry contents being candy (13 of Fig. 1).

As to Claim 8, the limitations of Claim 3 are disclosed as described above. Not disclosed is the use of bath products as the dry contents. It would have been obvious to one of ordinary

Art Unit: 3643

skill in the art at the time of the invention to modify the assembly of Kysela by substituting bath products for the candies depending upon consumer demand.

As to Claim 10, Kysela discloses a combination flower assembly and gift assembly comprising a dry assembly (10, 11, 12, and 20 of Figs. 1-4) comprising a dry vessel defining a top opening (region generally around 12 and 10 as shown in Fig. 4) and, a wet assembly (14 and 15 of Figs. 1-3) comprising a wet vessel (14 and 15 of Fig. 1), the wet vessel configured to retain an arrangement of living plants (23 of Figs. 1 and 2) and configured to cooperate with the dry assembly such that the wet vessel is insertible (col. 2 lines 48-50) into the top opening.

As to Claim 12, Kysela further discloses the dry assembly defined by a dry chamber (region defined by 10 of Fig. 1).

As to Claim 13, Kysela further discloses the dry vessel designed to prevent wet vessel form being placed into the dry chamber (by 14 of Figs. 1 and 2).

Claims 1-3, 10, and 11 are rejected under 35 U.S.C. §102(b) as being anticipated by Yellin (US 3,992,811).

As to Claim 1, Yellin discloses a plant/dry gift assembly (Fig. 4) comprising a dry assembly (52 of Fig. 4) comprising a dry vessel defining a top opening (shown in Figs. 4 and 5, especially region above 56 of Fig. 5) and having nonperforated walls (shown in Fig. 4); and, a wet assembly (60 and 70 of Fig. 4) comprising a wet vessel (60 of Fig. 4), the wet vessel inserted (shown in Fig. 4) into the top opening.

As to Claim 2, Yellin further discloses the dry vessel with a throat (56 of Figs. 4 and 5) adjacent to the top opening, the throat and wet vessel cooperatively arranged whereby the wet assembly is insertible into the throat (see Fig. 5).

As to Claim 3, Yellin further discloses the dry assembly defined by a dry chamber (region defined by 56 of Fig. 5).

As to Claim 10, Yellin discloses a combination flower assembly and gift assembly (Figs. 4 and 5) comprising a dry assembly (52 of Fig. 4) comprising a dry vessel defining a top opening (shown in Figs. 4 and 5, especially region above 56 of Fig. 5); and, a wet assembly (60 and 70 of Fig. 4) comprising a wet vessel (60 of Fig. 4), the wet vessel configured to retain an arrangement of living plants (shown in Fig. 4) and configured to cooperate with the dry assembly such that the wet vessel is insertible (shown in Fig. 4) into the top opening.

As to Claim 11, Yellin further discloses the dry vessel clear (col. 3 lines 10-15) and defining a throat (56 of Figs. 4 and 5) adjacent to the top opening, the throat and wet vessel cooperatively arranged whereby the wet assembly is insertible into the throat (see Fig. 5).

As to Claim 12, Yellin further discloses the dry assembly defined by a dry chamber (region defined by 56 of Fig. 5).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 9, 14, and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kysela (US 2,453,920) in view of Honkawa et al. (US 6,145,245).

As to Claim 6, the limitations of Claim 5 are disclosed as described above. Not disclosed is the use of OASIS in the wet assembly. Honkawa et al., however, discloses the use of an OASIS block in a plant/dry gift assembly (18 of Fig. 1; col. 5 lines 1-8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly of Kysela by using an OASIS block as disclosed by Honkawa et al. so as to keep the plants fresh and not water stressed for a longer period of time.

As to Claim 7, Kysela as modified by Honkawa et al. further disclose plurality of live plants (20 of Fig. 1) in the OASIS block.

As to Claim 9, the limitations of Claim 3 are disclosed as described above. Not disclosed is the dry content a stuffed figurine. Honkawa et al., however, discloses the use of a figurine in an assembly. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly of Kysela by using a figurine as disclosed by Honkawa et al. so as to have a keepsake of the occasion and to use a stuffed figurine depending upon cost and availability of figurines.

As to Claim 14, the limitations of Claim 13 are disclosed as described above. Kysela further discloses the wet vessel made of a substantially clear material (shown in Fig. 1). Not disclosed is the use of OASIS in the wet assembly. Honkawa et al., however, discloses the use of an OASIS block in a plant/dry gift assembly (18 of Fig. 1; col. 5 lines 1-8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the

Art Unit: 3643

assembly of Kysela by using an OASIS block as disclosed by Honkawa et al. so as to keep the plants fresh and not water stressed for a longer period of time.

As to Claim 15, Kysela as modified by Honkawa et al. further disclose plurality of live plants (20 of Fig. 1) in the OASIS block.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holder and Porter disclose in the prior art various assemblies with candy. Landau and Dentraygues disclose in the prior art various assemblies with dry and wet assemblies.

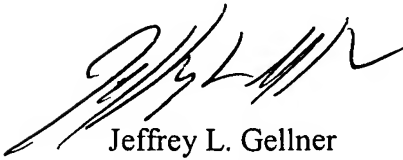
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3643

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner